

REMARKS

Status Summary

Claims 1-22 are pending in the present application. Claims 1-22 presently stand rejected under 35 U.S.C. § 102(b). Claims 1, 9, 17, 18, and 20 have been amended herein. No new matter has been added.

Claim Rejections - 35 U.S.C. § 102

Claims 1-22 presently stand rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,726,178 to Mallaney et al. ("Mallaney").

(i) The Examiner's Contentions

With reference to present claims 1, 9, and 17, the Examiner indicates that Mallaney discloses a movable chute apparatus comprising: a chute flap **44** attached to a housing of a mowing machine (referencing Figure 9 of Mallaney), the chute flap capable of being moved in an open/closed position (via pivot point **46**), and thus providing a discharge chute (through opening **24**). The Examiner further contends that Mallaney discloses a retaining flap (referring to a spring's longitudinal biasing/spring members **48**) moveably attached to the housing (left extending member of the spring **48**). The Examiner finally indicates that the functional features are also met since the right extension member of spring **48** moves from horizontal to an at least generally vertical position (referring to Figure 12 of Mallaney) and is

movable independently from the flap since the flap and extension member(s) is not the same element (i.e., separate).

The Examiner further contends that Mallaney discloses: that the chute flap is pivotally attached at about reference 46 (referencing present claims 2 and 10); the chute flap is biased toward either closed or open position (referencing present claims 3 and 11); referring to Mallaney Figure 4, the chute flap comprises flange & wall portions (referencing present claims 4 and 12); referring to Mallaney Figure 3, the retaining flap is pivotally attached to the housing about the horizontal shaft, not numbered (referencing present claims 5 and 13); the retaining flap is biased toward its retaining position (i.e., retains the chute flap as shown in Mallaney Figure 10) (referencing present claims 6 and 14); first & second sections (left & right extension biasing members), the second (right) section capable of performing the function claimed, (i.e., capable of securing the chute flap in its closed position) (referencing present claims 7 and 15); the chute flap & the retaining flap are both rotatable about different axes (referring to the two parallel axes in Mallaney Figures 5 and 6) (referencing present claims 8 and 16); the first & second sections are at least generally perpendicular to each other (referring to the at least generally perpendicular position in Mallaney Figure 12) (further referencing present claim 17); and the chute flap and the retaining flap are rotatable about substantially perpendicular axes (contending that Mallaney Figures 5 and 6 illustrate both flaps are substantially perpendicular to 5-5 cross section) (referencing present claim 22). The

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Examiner also states that the structure disclosed by Mallaney renders method claims 18-21 inherent.

These positions are respectfully traversed as described further below.

(ii) Applicant's Response

Mallaney discloses a discharge cover assembly for a mowing machine. Figures 3 and 4 most clearly show a cover assembly **38** which includes a planar member **40** and a cover **44**. Planar member **40** is mounted to a planar deck **20** through a front pivot **42** which allows the cover assembly **38** to pivotally move from a position where it overlies and covers the discharge opening **24**, to an open position wherein the mower is adapted for a side discharge operation. As shown in Mallaney and specifically described (for example beginning at column 3, line 24), the rear end of the planar member **40** is connected to the planar deck **20** by a strap **50**, pivot **52** attached to the housing, and a post **54** attached to cover assembly **38** with a wing nut **56**. In this manner, strap **50** is attached to deck **20** on one end of strap **50** and to the cover assembly **38** on the opposite end or portion of strap **50**. Cover assembly **38** can move or pivot on pivot **42** and post **54**, and strap **50** can rotate about pivot **52** and post **54** wherein the position of post **54** within slot **58** of strap **50** allows for such outward movement of cover assembly **38** and strap **50** away from the original position against deck **20**.

With reference to Mallaney Figures 3, 4, 6, and 9 and specifically described (for example at column 3, lines 20-23), a spring **48** (what the Examiner refers to as a retaining flap) supported by tabs **49** forming a part of planar member **40** biases cover

**44** to its closed position. Spring **48** comprises a cylindrical portion (not numbered) parallel to hinge **46** to which biasing spring coils are mounted. As shown in Mallaney Figure 3, the left spring coil has an extending member projecting outwardly onto the surface of planar member **40** and the right spring coil has an extending member projecting outwardly onto the surface of cover **44**.

By the above amendments, independent claim 1 has been amended to now recite that the retaining flap has a first flat portion extending along a first plane and a second flat portion extending along a second plane different from the first plane. Support for this amendment can be found throughout the application, including the drawings, as originally filed (see, for example, page 8, lines 10-14 and all drawings as originally filed). As discussed above, what the Examiner considers a retaining flap in Mallaney is actually a spring **48** supported by tabs **49** for the purpose of biasing cover **44** to a closed position. Spring **48** comprises a cylindrical portion (not numbered) parallel to hinge **46** to which biasing spring coils are mounted and includes extending members projecting outwardly onto the surface of planar member **40** and cover **44**. Spring **48** operates in a similar manner to that of torsion spring **12** described in the present application as filed and which functions to bias retaining flap RF toward its retaining position (see, for example, page 8, lines 4-6 and Figures 2A and 2C of the present application as originally filed).

Applicant notes that spring **48** of Mallaney is merely a torsion spring known to those of skill in the art. There is no teaching or suggestion by Mallaney of the features of presently amended claim 1. More specifically, there is no teaching or

suggestion by Mallaney of a retaining flap having a first flat portion extending along a first plane and a second flat portion extending along a second plane different from the first plane, wherein the retaining flap is moveably attached to the housing of a mowing machine and where at least a portion of the retaining flap is movable in an at least generally vertical direction away from the housing. There is also no teaching or suggestion by Mallaney of such a retaining flap that is movable between a retaining position and a non-retaining position where the retaining flap can in its retaining position provide support to maintain the chute flap in either its closed or open chute flap position. As such, it is respectfully submitted that the rejection of claim 1 and its depending claims 2-8 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Independent claim 9 has been amended as set forth above and, like claim 1, recites that the retaining flap has a first flat portion extending along a first plane and a second flat portion extending along a second plane different from the first plane. The arguments set forth above with respect to claim 1 relating to the teaching of Mallaney of spring **48** (which is similar in construction and function to torsion spring **12** of the present subject matter) apply with respect to claim 9 as well. In light of the above, it is respectfully submitted that the rejection of claim 9 and its depending claims 10-16 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Independent claim 17 has been amended as set forth above to now recite that the retaining flap has a first flat portion extending along a first plane and a second flat portion extending along a second plane different from the first plane. The arguments

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set forth above with respect to claim 1 relating to the teaching of Mallaney of spring **48** (which is similar in construction and function to torsion spring **12** of the present subject matter) apply with respect to claim 17 as well. Applicant respectfully submits therefore that the rejection of claim 17 and its dependent claim 22 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Independent claim 18 as amended is directed to a method for moving a chute apparatus of a mowing machine and recites lifting a retaining flap having a first flat portion extending along a first plane and a second flat portion extending along a second plane different from the first plane, wherein the retaining flap is moveably attached to a housing on a mowing machine. Amended claim 18 further recites that wherein lifting the retaining flap moves the retaining flap from a retaining position to a non-retaining position to allow a chute flap attached to the mowing machine to move from a closed position to an open position whereby the chute flap provides a discharge chute. As discussed above, applicant submits that spring **48** of Mallaney is merely a torsion spring as known to those of skill in the art. There is no teaching or suggestion in Mallaney of a chute flap being moveable from a closed position to an open position by lifting of a retaining flap as presently recited in a direction at least generally vertically away from the housing of a mowing machine. As such, applicant respectfully submits that the rejection of independent claim 18 and its dependent claim 19 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Similar to claim 18, amended independent claim 20 is directed to a method for moving a chute apparatus of a mowing machine and recites a step of lifting a

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retaining flap having a first flat portion extending along a first plane and a second flat portion extending along a second plane different from the first plane, wherein the retaining flap is moveably attached to a housing on a mowing machine. Amended claim 18 further recites that wherein lifting the retaining flap moves the retaining flap from a retaining position to a non-retaining position by pivoting the retaining flap along a first axis wherein at least a portion of the retaining flap moves in a direction at least generally vertically away from the housing for the retaining flap to allow a chute flap attached to the mowing machine to pivot along a second axis from a closed position to an open position whereby the chute flap provides a discharge chute. Claim 20 further recites that the first axis on which the retaining flap is pivoted and the second axis on which the chute flap is pivoted are substantially perpendicular to one another. As discussed above with respect to claim 18, spring **48** of Mallaney is merely a torsion spring as known to those of skill in the art. There is no teaching or suggestion in Mallaney of a chute flap being moveable from a closed position to an open position by lifting of a retaining flap as presently recited in a direction at least generally vertically away from the housing of a mowing machine. Applicant respectfully submits therefore that the rejection of independent claim 20 and its dependent claim 21 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

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CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above amendments and remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

JENKINS, WILSON, TAYLOR & HUNT, P.A.

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